In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 151

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, VALIER COMMUNITY CLUB, a voluntary civic organization, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, and MONTANA WESTERN RAILWAY COMPANY,

Defendants and Appellants,

vs.

GREAT NORTHERN RAILWAY COMPANY, a Corporation,

Plaintiff and Appellee.

Joint Brief of Valier Community Club and Board of Railroad Commissioners of the State of Montana, Appellants

Appeal from the United States District Court for the District of Minnesota Fourth Division

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I.
THE OPINION OF THE COURT BELOW

The decision of the statutory Three Judge Court of the United States District Court for the District of Minnesota, Fourth Division, was reported in 96 Federal Supplement 298 and is found on page 592 of the Record. Final decree therein was entered in said court on March 27, 1951, and the appeal is taken from such final decree.

II.
STATEMENT OF THE CASE

The Brief of the United States of America contains a statement of the case. There is likewise complete statement of facts contained in the Decision of the Interstate Commerce

Commission in Finance Docket 16515, Montana Western Railway Company Abandonment found on page 11 of the Record and reported in 275 I. C. C., 512. In the interests of brevity, we will not make a full statement of the case but adopt and refer to that contained in the Brief of the United States of America.

The Montana Western Railway Company operates a railroad about 20 miles in length between Conrad and Valier, Montana, about 2.98 miles of the operation is over the Great Northern tracks. The Montana Western Railway Company filed its application to abandon its entire operation. This application was assigned Finance Docket No. 16515. (R. 49). On August 1, 1949, the Valier Community Club filed a complaint (Docket 30325) asking for the establishment of reasonable joint rates on grain in carloads from points on the Montana Western to points on the Great Northern. (R. 403). Finance Docket No. 16515 was reopened and the two proceedings were heard on a combined record and determined in one decision. The application of the Montana Western Railway Company to abandon was denied and the establishment of joint rates and division thereof between the Great Northern and Montana Western was ordered. (R. 25).

The appellee, Great Northern Railway Company filed its petition in the United States District Court for the District of Minnesota, Fourth Division, for a decree enjoining the enforcement of the Order of the Interstate Commerce Commission against it. (R. 1). The final decree of the court in favor of the Great Northern was entered. (R. 604).

These appellants and the Montana Western Railway Company joined in the appeal of the United States of America and the Interstate Commerce Commission from such decree.

III.

SPECIFICATION OF ERRORS

We adopt as our own, the specifications of error stated in the Brief of the United States of America and the Interstate Commerce Commission.

IV.

ARGUMENT

INTRODUCTION

The position of the Intervening Appellants Valier Community Club and the Board of Railroad Commissioners of the State of Montana are identical with that of the principal appellants United States of America and the Interstate Commerce Commission. We concur in the Briefs filed by them and adopt the arguments contained in their brief.

SUMMARY

Point A, The Interstate Commerce Commission, after extensive and complete hearing and being fully advised, determined that the public convenience and necessity required the continued operation of the Montana Western Railroad Company between Valier and Conrad, Montana. In order to avoid discontinuance, it found that a joint rate with the Great Northern on grain with divisions yielding a greater proportion to the Montana Western were proper and necessary. These findings by the Commission were supported by

adequate and substantial evidence and were within the jurisdiction of the Commission. The maintenance of an adequate transportation system to serve the needs of the public may require that weaker roads may be entitled to a greater division of rates in order to continue to furnish necessary service, and jurisdiction to make such divisions has been delegated to the Interstate Commerce Commission by the provisions of Section 15 (6) of the Act.

Point B. The Montana Western was constructed from money borrowed from the Great Northern and has been financed to the extent required by it from its construction until 1949. The Great Northern is the recipient of all traffic moving beyond the Montana Western Line. The established practice of these railroads should not be discontinued to the detriment of the public. The joint rates and divisions, thereof, do not materially change what the Great Northern was voluntarily doing for years by way of advances of money required for operation.

Point C. The decision of the Commission is supported by adequate evidence and is within its jurisdiction. The decision of the District Court substitutes its opinion for that of the Commission and entirely ignores the provision of Section 15 (6) of the Interstate Commerce Act. The decision, if followed, would permit the substitution of the court's determination as to the evidence to supplant that of the Commission within its lawfully delegated authority and would ultimately force the abandonment of many small railroads to the detriment of the public by preventing divisions taking into account the fiscal conditions of the carriers.

POINT A.

THE COMMISSION'S ACTION WAS WITHIN ITS JURISDICTION AND IN EVERY WAY VALID.

In view of the record in this case we do not believe it can be seriously argued that a full and complete hearing was not afforded all parties. Two hearings were held. (R. 71 and 426). At the time of the first hearing, the Great Northern was not a party. At the second hearing the two dockets were combined. The Montana Western was offered the opportunity to put in additional evidence. The Great Northern was offered an opportunity to cross examine any witnesses in the first hearing or put in any evidence it desired. The Proposed Report of the Examiner was the subject of Exceptions filed by the two railroads and the matter was then orally argued before the Commission. (R. 11). After the decision a petition for reconsideration was filed by the Great Northern and other parties filed their replies. Every question was presented to the Commission and after consideration the Commission issued its order of December 4, 1950, denying the petition for reconsideration. (R. 28).

From the Great Northern's petition, (Par. 7) (R. 6) it would appear that their contention is that each paragraph in section 15 of the Act must be complied with before the following section may be applied by the Commission. This is of course an unsound principle of interpretation. The Act must be applied in its entirety.

Counsel for the Great Northern contend that there is no joint rate existing and that because of the limitations placed on Section 15(3) of the Interstate Commerce Act by Section

15(4) no joint rate may be established for the purpose of assisting a carrier financially. They contend that the provisions of Section 15(6) can not be applied until a joint rate is established under Section 15(3). They also argue that no one other than the carriers may complain of the divisions between carriers. These contentions if sustained would make the Interstate Commerce Act a nullity and deprive the Commission of authority to take steps for the benefit of the public in many instances. Such a condition was not contemplated by Congress and has not been established by the courts.

Section 15(3) (49 U. S. C. 15(3)) provides that the "Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint *or upon its own initiative without complaint,* establish through routes, joint classifications, and joint rates * * * and the divisions of such rates, fares or charges as hereinafter provided * * *." Sections 15(1), 15(3) and 15(6) all provide that the Commission may on *complaint* or on its *own initiative* and *after full hearing* take the steps provided in the paragraphs. There is no limitation on who may file the complaint and even if there were no complaint the Commission could proceed on its own initiative.

The petition alleges that the division of rates was made on the complaint of the Valier Community Club in excess of the Commission's authority. Petitioners would apparently contend that only the carriers are interested in the division of the money. It is true that the shipper is not interested

in where the money goes from a financial position. But where, as here, the existence of the Montana Western depends on the division of money, parties served by the Montana Western are surely interested in the question. There are no more interested parties than those who may be deprived of the service. The record is clear that the carriers concerned could not agree on the establishment of divisions. It would be a delaying and idle gesture to require the steps to be taken separately.

The Montana Western terminates at its connection with the Great Northern. It has no other connection. The Great Northern is the only road that can receive the traffic. As a matter of fact because of the physical conditions a through route with the Great Northern is the only possibility of either road moving the traffic. The through route exists. (*Western Pacific vs. Northwestern Pacific Ry Co.*, 191 I. C. C. 127). The through rate has been a proportional rate established by the carriers. Regardless of what it has been called, it is in fact a joint rate divided by agreement between the carriers. In the past, deficiencies in revenue of the Montana Western from the agreed division of the revenue under the proportional rate has been met by advances from the Great Northern. The application for abandonment filed by the Montana Western in Finance Docket 16515 recites that the Great Northern notified the Montana Western it would no longer advance money for any purpose. (R. 50).

In *Great Northern vs. United States,* 81 Fed. Supp. 921, the court said:

> "A 'through route' is an arrangement, express or implied, between connecting railroads for the continuous carriage of goods from the originating point on the line of one carrier to the destination on the line of another. In determining the existence of a through route, all of the circumstances connected with the shipment from place to place may be taken into account."

See also: *Baltimore & O. R. Co. vs. U. S.,* 24 Fed. Suppl. 73.

In *Baltimore and O. R. Co. vs. United States,* 298 U. S. 349, 56 S. Ct. 797, 80 L. Ed. 1209, the Supreme Court said:

> "The prescribing of divisions is a legislative function. Exertion of that power by the Commission is conditioned upon its finding after a full hearing that the divisions then in force do not, or in the future will not, comply with the specified standards."

See also: *Beaumont S. & L. & W. Ry. Co. vs. United States,* 36 Fed. (2) 789.

The specified standards mentioned include those specified in Section 15(6) of the Act. The division of rates include the amount each road gets whether it be from a proportional or joint rate or whether it be from money advanced for expenses without hope of repayment.

In the Commission's order it has declared, what is a fact, in any event, that a through route exists and that the rate should be a through joint rate rather than a through proportional rate. It has then established the division of the

rate between the carriers, under the provisions of Section 15(6) of the Interstate Commerce Act. This is the only logical action if the Act is to be given force and effect.

The Great Northern would apparently have the Commission find that the Montana Western can not be operated and permit abandonment. The Great Northern would then receive the traffic at the rate from a point on its line rather than the proportional or divided rate from Conrad. This desire appears to exist even though at a reasonable division, as found by the Commission, the Montana Western can be kept in operation at a cost to the Great Northern which is no greater than it has sustained through advances of operating deficit.

The fact that joint rates and divisions and the apportionment thereof is a matter of importance in considering abandonment of a railroad line was commented on in *"Abandonment by Brownwood, North and South Railway,"* 105 I. C. C. Reports 729, 736, where the Interstate Commerce Commission said in its opinion:

> "The applicant's line, though operated independently, is a part of the Frisco system. It is admitted that the system as a whole is now being operated at a profit * * *. (At the original hearing) there was nothing to show how the applicant's revenue from this traffic (system) was determined or whether it was a fair portion of the system earnings from such business. This was a serious omission. Where a subsidiary of a large system seeks to abandon its line it is, for obvious reasons, of great importance in considering whether the line is being operated at a loss, especially where most of the traffic is interchanged with other lines of the same system, to know what apportionment is made of system revenues from such traffic." (Parenthesis ours)

The opinion clearly reveals the importance of determining joint rates and division in matters of this type. This would naturally be true because if the line seeking abandonment is not receiving its proper share of the joint rates then it cannot be considered to be operating at a financial loss. In the instant case both lines have for more than a quarter of a century recognized what is a proper division of the rates, not by making a proper division of the rates, but by the Great Northern paying the operating deficit of the Montana Western Railroad.

Apportionment of revenue from joint rates has many times been made upon the basis of providing financial support to small railroad lines, even though such apportionment may seem to be inequitable to the larger line. In the case of *U. S. v. Abilene and Southern Railway Company*, 265 U. S. 274, the United States Supreme Court said:

> "In determining what the division of a joint through rate should be, the Interstate Commerce Commission may, in the public interest take into consideration the financial needs of a weaker road, and it may be given a share larger than justice merely as between the parties would suggest 'in order to maintain it in effective operation as part of an adequate transportation system', provided the share left to its connections is 'adequate to avoid a confiscatory result'."

In *Akron C. & Y. Railway Company v. U. S.*, 261 U. S. 184, the United States Supreme Court said:

> "The Interstate Commerce Commission may in making a division of rates between connecting carriers take into consideration the importance to the public of the transportation service of the carriers and it is authorized to make a particular division of rates for the ex-

press purpose of relieving the financial needs of particular lines, to keep them in effective operation."

The Interstate Commerce Commission said in *New England Divisions*, 126 I. C. C. 579-667, that mileage prorate was not equitable for divisions when the hauls are short on the one hand and long on the other. It expressed a similar opinion in *Southwestern Official Divisions*, 234 I. C. C. 135-140.

The Commission has the right under the statute to fix joint rates and to prescribe the proper division of the rates. Nor need it wait for the carriers to first try to agree to the division. Paragraph 6 of Section 15 of the Interstate Commerce Act gives this authority. This section provides in part:

> *"In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carriers is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge."* (Emphasis ours)

In *Kanawha Black Band Coal Co. v. C. & O. Ry. Co.*, 142 I. C. C. 433, 435, after referring to Section 1(4) and 15(6) of the Act, the Commission said:

> "These provisions disclose that when we are called upon to fix divisions, we must keep continually in view the public interest, the public need for an effective

transportation system, and the consequent necessity that carriers shall receive compensation fairly proportioned to the amount and character of service they perform and adequate to enable them to perform it efficiently. The provisions above quoted specify matters to be considered but authorize us also to take into consideration any additional fact or circumstance which we deem material in measuring the justness and reasonableness of divisions."

The Commission after finding that public convenience and necessity required the continued operation of the Montana Western then proceeded to use the means at hand to make this possible, i.e., an increase in revenue through greater proportion or division of the rate. This was proper under Section 15(6) of the Act. To say that the only parties who can raise the question of divisions of revenue are the carriers, would be to ignore the language of the act which provides that when the Commission *on complaint or on its own motion* finds that a division of a joint rate is not proper *(whether agreed upon by the carriers, or any of them, or otherwise established)* it may fix the division of joint rates. The Commission acted correctly.

POINT B

THE ORDER WAS NECESSARY TO PROTECT THE INTERESTS OF THE PUBLIC

The Montana Western was built by the Company which developed the irrigation project at Valier. It was financed jointly by the land company and the Great Northern. The two companies were instrumental in bringing settlers to the area. The Great Northern at all times from 1912 to

1949 has advanced money to keep the road in operation. These various facts are stated in the Commission decision of July 31, 1950. (R. 13).

There can be no argument but that the settlers in the Valier area use the railroad for all the practical purposes they can. Nor is there any argument that 95.8 of the traffic is interstate, moving over the Great Northern from Conrad. Public convenience and necessity does require the operation of the railroad. The facts may not support a legal estoppel but there is no question that every fair and moral consideration supports the fact that everything possible should be done to continue the operation of the railroad.

There are innumerable types of estoppel: legal estoppel; equitable estoppel; estoppel by conduct; quasi estoppel. These doctrines have developed from the beginning of time and in furtherance of justice they are based on the principle that he, who by his conduct leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted. It has its foundation in the immutable principle of natural justice being applied so as to conclude a party who, by his actions and admissions, intended to influence the conduct of others when in good conscience and honest dealings he ought not to be permitted to gainsay them.

The facts in this case will bear careful consideration in the light of the principle we set forth. When two railroads, as in this case, by their own arrangement for a long period

of time, so operate and conduct themselves as to lead the public to believe certain facts and rely on them, the Commission ought, in equity and good conscience refuse them the right to change that position except under the most extraordinary circumstances. These circumstances do not exist. The Commission's finding does not materially change what these railroads long have done themselves. To all intents and purposes, the Montana Western is a branch line of the Great Northern. True, they are separate corporations. The Great Northern put up $165,000 to build this road. This railroad has been there for forty years. Not one cent of the principal or interest has been paid. During this time the Great Northern has advanced $195,000, a total of $730,000 for equipment and other things over the years. The Great Northern was willing to do it and the Montana Western Railway was willing to do it. In 1947, with all these advances having been made, the Great Northern suggested a program of rehabilitation for the Montana Western. The Great Northern agreed to advance further funds in the sum of $171,000. This program was to be a rehabilitation program over an eight year period. In 1948 the amount allocated for the rehabilitation program was to be $27,000 and it advanced $17,000. (R. 228). The Montana Western became involved in an argument with the Great Northern and refused to renew the bond issue of some forty years' standing, thus interrupting the relationship of the past forty years.

The Great Northern always in effect considered the Montana Western a part of its system. In 1923, as the record shows, the Great Northern wrote a letter to the Montana

Western, which letter is in evidence, in which it was stated: *"The Great Northern intends to take care of the Montana Western Railway, in so far as it is unable to take care of itself."* (R. 199). (Underscoring ours). A similar letter was written in 1937. (R. 200).

The Great Northern is not an eleemosynary institution. It recognizes that in the Valier country, along the route of the Montana Western Railway, a million bushels of grain per year is produced. Every carload of this grain goes from the Montana Western Railway to the Great Northern's line. It is a fair estimate this produces a gross revenue to the Great Northern of half a million dollars a year. The order of the commission does no injury to the Great Northern. It takes revenue out of one pocket of the Great Northern and puts it in another pocket of the Great Northern. It does only what the Great Northern and Montana Western have done for forty years.

If the Interstate Commerce Commission were to fulfill its duties in protecting the interests of shippers and carriers alike and maintain adequate transportation facilities, it was necessary to provide for greater revenues to the Montana Western and avoid abandonment of that line. For 38 years the Great Northern apparently felt that the continuance of the line was necessary for it advanced several hundred thousand dollars for that purpose. The shipping public should not now be penalized because of a change in policy between the railroads. The Commission's action does nothing more than by rule and order continue what the two companies had done by agreement.

In considering this case it must also be remembered that the only people who stand to lose are the people of the Valier area. The Great Northern would get the haul of the grain in any event. If the Montana Western were abandoned the Great Northern would originate the traffic on its own line and would get the traffic at a higher rate. (Exhibit A to Petition, page 14).

POINT C

THE ORDER OF THE COMMISSION WAS SUPPORTED BY ADEQUATE EVIDENCE AND THE LOWER COURT ERRONEOUSLY SUBSTITUTED ITS OPINION FOR THAT OF THE COMMISSION.

This action was initiated under the provisions of Title 28, U. S. C., Sections 2321 to 2325. The power of the Court in reviewing the order of the Interstate Commerce Commission was that of review. The judicial authority in such cases was announced by the United States Supreme Court in *Assigned Car. Cases*, 274 U. S. 564, 47 S. Ct. 727, 71 L. Ed. 1204, when it said:

> "There was ample evidence to support the Commission's findings. It is not for courts to weigh the evidence introduced before the Commission. Western Papermakers' Chemical Co. v. United States, 271 U. S. 268, 271, or to inquire into the soundness of the reasoning by which its conclusions are reached. Interstate Commerce Commission v. Illinois Central R. R. Co., 215 U. S. 452, 471; Skinner and Eddy Corporation v. United States, 249 U. S. 557, 562; or to question the wisdom of regulations which it prescribes. United States v. New River Co., 265 U. S. 533, 542. These are matters left by Congress to the administrative 'Tribunal appointed by law and informed by experience.' Illinois Central R. R. Co. v. Interstate Commerce Commission, 206 U. S. 441, 454."

See also:

Interstate Commerce Commission v. Mechling, 330 U. S. 567, 574, 67 S. Ct. 894, 91 L. Ed. 1102

Beaumont, S., L. & W. Ry. Co. v. United States, 36 Fed. (2) 789

Pittsburgh & W. V. Ry. Co. v. United States, 41 Fed. (2) 806, 808

It is thus apparent that the power of the district court extended to matters of law affecting the validity of the orders in question. If the record contains substantial evidence to support the Commission's finding the weighing of that testimony is a matter within the exclusive jurisdiction of the Commission. If the order is within the legal limits of the Interstate Commerce Act, the wisdom of the Commission in making such an order is not subject to review. The evidence of record does justify the action of the Commission. The district court exceeded its authority in substituting its opinion for that of the Commission.

The lower court's determination that under Section 15(4) the Interstate Commerce Commission is prohibited from helping out a weak carrier is directly contrary to the Congressional direction in Section 15(6) of the Act that this very condition should be considered. This interpretation of the statute and the substitution of the court's opinion for that of the Commission can only result in serious detriment to the short line carriers which are so important to the general transportation policy of this nation. In the instant case it will probably mean the abandonment of the Montana Western. The Commission is the agency delegated with authority to determine the transportation policy within the limits of the Congressional authority. The court was acting be-

yond its authority when it ignored the provisions of Section 15(6) and substituted its opinion as to the transportation needs of the Valier community for that of the Commission.

V.
CONCLUSION

We respectfully submit that the evidence sustains the order of the Interstate Commerce Commission. The findings and orders of the Interstate Commerce Commission are matters within the jurisdiction of the Commission and are valid, legal and proper. The District Court was in error in ignoring the provisions of Section 15(6) of the Interstate Commerce Act and in substituting its opinion for that of the Commission; the agency delegated by Congress with the authority of determining the transportation policy and carrying out the provisions of the Act. The decision of the lower court should be reversed and the Order of the Interstate Commerce Commission should be permitted to become effective.

Respectfully submitted,

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VI.

APPENDIX

PROVISIONS OF INTERSTATE COMMERCE ACT

Sec. 15 (As amended June 29, 1906, June 18, 1910, February 28, 1920, March 4, 1927, June 19, 1934, August 9, 1935, and September 18, 1940.) (U. S. Code, title 49, sec. 15.)

(1) * * * * *

(2) * * * * *

(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fare, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all

carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section.

(4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: Provided, however, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or

other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

(5) * * * * *

(6) Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining

the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.